

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

W & T OFFSHORE, INC.

CASE NO. 2:14-CV-02449

VERSUS

JUDGE JAMES D. CAIN, JR.

DAVID BERNHARDT, ET AL.

MAGISTRATE JUDGE KAY

JUDGMENT

Before the court is a Mandate [doc. 126] received this date from the United States Court of Appeals for the Fifth Circuit, relating to the cross-appeals filed from the summary judgment issued by this court on May 29, 2018. The procedural and factual background of this matter can be found in the opinion attached to that mandate.

The Fifth Circuit reversed this court's judgment in part, determining that the Department of the Interior's orders to pay evinced the creation of a new substantive rule that was issued without the notice and comment procedures required under the Administrative Procedures Act.¹ It then remanded the case for proceedings consistent with the panel's opinion.

If an agency does not comply with the notice and comment procedures quired under the Administrative Procedure Act before promulgating a covered rule, the rule is invalid.

La Union del Pueblo Entero v. Federal Emergency Mgmt. Agency, 141 F.Supp.3d 681, 692

¹ The Fifth Circuit has affirmed this court's decision as to W&T Offshore, Inc.'s entitlement to equitable recoupment and the permissibility of the Department of the Interior's interpretation of 43 U.S.C. § 1337(a)(1)(A), under which it changed its election from payment in kind to payment in cash for overdue royalties on federal offshore leases. The Department of the Interior did not challenge this court's ruling that its order for W&T to pay interest on past-due royalties was arbitrary and capricious.

(S.D. Tex. 2015). Accordingly, **IT IS ORDERED, ADJUDGED, and DECREED** that the Department of the Interior's 2010 payment orders be **VACATED**. The matter is remanded to the Department of the Interior in order to resolve whatever debts remain outstanding, consistent with the judgments made by the Fifth Circuit and those not appealed from this court.

THUS DONE AND SIGNED in Chambers on this 21st day of February, 2020.

A handwritten signature in black ink, appearing to read "James D. Cain, Jr.", is written over a horizontal line. The signature is stylized with large loops and a prominent "J" at the beginning.

JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE